

**GYRO CHEMICALS, INC.
DEER PARK, TEXAS**

ADMINISTRATIVE RECORD: SARA 6-90-003



****** CONFIDENTIAL ******

**** ENFORCEMENT SENSITIVE ****

PLEASE SEE ENFORCEMENT COORDINATOR BEFORE VIEWING FILE



NOTICE OF INSPECTION

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Emergency Planning and Community Right-to-Know
Act of 1986 (SARA Title III)
Comprehensive Environmental, Response, Compensation, and
Liability Act (CERCLA) of 1980

1. INVESTIGATION IDENTIFICATION			2. TIME	3. FIRM NAME
DATE	INSPECTOR NO.	DAILY SEQ. NO.		
03/02/90	228	01	9:45 AM	Gyro Chemical & Equipment Company, Inc.
4. INSPECTOR ADDRESS				5. FIRM ADDRESS
U.S. EPA, Region 6 1445 Ross Avenue (6E-EP) Dallas, TX 75202				5206 Railroad Ave. Deer Park, Tx 77536

REASON FOR INSPECTION

This inspection is for the purpose of determining compliance with The Emergency Planning and Community Right-to-Know Act of 1986, Sections 302-312 and/or compliance with the CERCLA, Section 103. Additionally, compliance with all other Federal laws administered by EPA may be included. The scope of this inspection may include, but is not limited to reviewing and obtaining copies of documents and records; interviews and taking of statements; review of manufacturing, importing, processing, use, and/or waste treatment facilities; taking samples and photographs; and other inspection activities necessary to determine compliance with the Act.

INSPECTOR SIGNATURE		RECIPIENT SIGNATURE	
NAME		NAME	
Stephen Mason		Earl Moore	
TITLE	DATE SIGNED	TITLE	DATE SIGNED
Enforcement Officer	3/2/90	President	3/2/90

SARA TITLE III SECTION 302-312 INSPECTION REPORT

Name of Firm: Gyro Chemical & Equipment Company, Inc.
5206 Railroad Avenue
Deer Park, Texas 77536
(713) 479-5905

Mailing Address: P.O. Box 853
Deer Park, Texas 77536

Date & Time of Inspection: March 2, 1990; 10:00 a.m.

Inspectors: Steve Mason, George Allman,
Dusty Pruitt

Employees: 9 full time employees

SIC Code: 5169

Raw Chemicals Used at Facility: Acetic Acid, Acetone, Avery #42,
Calcium Magnesite, Caustic Soda
liquid, Caustic soda flake, Dioctyl
Phthlate, Ethanol, G Solvent,
Glycerine, Hydrofluoric Acid,
Isopropyl Alcohol, Lemer Acid,
Methanol, Methylene Chloride, Methyl
Ethyl Ketone, Muriatic Acid, Nitric
Acid, Perchloroethylene, Phosphoric
Acid, Sodium Hypochlorite, Sodium
Nitrate, Sodium Nitrite, Sodium
Sulfite, Toluene, 1,1,1-
Trichloroethane, Versene

Estimate Annual Sales: \$1,380,000.00 in 1989

Type of Ownership: Owned and operated by Earl Moore

Persons Interviewed: Inspectors credentials were
presented to Mr. Earl Moore and the
purpose of the inspection was
related to him.

Discussion with Management:

Gyro Chemicals sells specialty chemicals that have been blended for them and are used in the shipping industry. Gyro purchases raw chemicals, sends them off-site to be blended, packaged and sold as product. In a few situations, the blending will take place on-site. After presenting our credentials to Mr. Moore he gave us a brief description of their operations, and then led us on a tour of the facility. In the main warehouse and back of the facility, we conducted a visual inventory of raw chemicals and

final product on-hand. We then went into Mr. Moore's office where we were allowed to view inventory records and Material Safety Data Sheets. Mr. Moore gave us details of the release that occurred on Christmas day. He stated that they had purchased 2-55 gallon drums of Methyl Mercaptan around June, 1989, and they had repeatedly had to repack them due to leakage. On the day of the spill, the drums behind the warehouse. A hard freeze apparently ruptured the drums, with all product evaporating into the air. Mr. Moore estimated that the drums were 90% full at the time of the spill. During the entire inspection, Mr. Moore was cooperative with us.

Attached documentation: Notice of Inspection
 Chemical Inventories



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

CERTIFIED MAIL # P 176 162 036
RETURN RECEIPT REQUESTED

Mr. Earl Moore
Gyro Chemical and Equipment Company
5206 Railroad Avenue
Deer Park, Texas 77536

Re: Notice of Proposed Assessment of Civil Penalty;
Docket No. SARA 6-90-003

Dear Mr. Moore:

Enclosed is an Administrative Complaint ("Complaint") that the United States Environmental Protection Agency ("EPA") has filed against Gyro Chemical and Equipment Company under authority of Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. Section 11045, and under authority of Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9609. In the Complaint, the EPA alleges that Gyro Chemical and Equipment Company has violated Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA. This Complaint also includes Proposed Civil Administrative Penalties, Notice of Opportunity to Request a Hearing, and information on requesting an informal settlement conference.

You have the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty. Please pay particular attention to the section in the Complaint entitled "Notice of Opportunity to Request a Hearing." If you fail to request a hearing within twenty (20) days of service of the Complaint, you will waive your right to a hearing and the proposed civil penalty may be assessed against you without further proceedings. You have the right to be represented by an attorney, or to represent

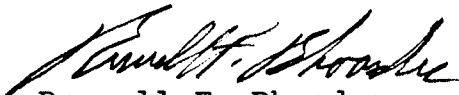
yourself at any stage of these proceedings. Any hearing will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22. A copy of these rules is enclosed.

Whether or not you request a hearing concerning the alleged violations and the amount of the proposed penalty, we invite you to confer informally with EPA. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as the result of an informal conference. If a settlement can be reached, it will be formalized in a Consent Agreement signed by you and by the Director, Environmental Services Division, EPA Region 6. This Consent Agreement shall be accompanied by a proposed Consent Order which will be agreed upon by the parties and submitted for approval to the Regional Administrator. The approval of the Consent Agreement and Final Order by the Regional Administrator shall constitute a waiver by you of your right to a hearing on, and to judicial appeal of, the agreed-upon civil penalty.

A request for an informal conference does not by itself extend the twenty (20) day deadline for filing an answer to the complaint and requesting a hearing; you may pursue filing an answer, requesting a hearing, and requesting an informal settlement simultaneously. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Hortense Haynes, EPA Region 6 (6C-R), 1445 Ross Avenue, Dallas, Texas, 75202, or telephone (214) 655-2125. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference held.

We urge your prompt attention to this matter.

Sincerely,



Russell F. Rhoades
Director
Environmental Services Division (6E)

Enclosure

cc: Regional Hearing Clerk
Hortense Haynes (6C-R)

ROUTING SLIP

SARA / CERCLA ENFORCEMENT
CONTINGENCY PLANNING SECTION (6E-EP)

LOGGED IN
J.S. Vaughan 6/15/90

TYPE OF ACTION Administrative Complaint

RESPONDENT Gyro Chemical and Equipment Company

DOCKET NO. SARA 6-90-003

(6E-EP) ORIGINATOR

Stephen Mason 6/10/90

(6E-EP) JAMES STAVES

Stephen Mason for 6/15/90

(6E-E) CHARLES GAZDA

CG

(6C-R) HORTENSE HAYNES

HH

(6C-R) PAM PHILLIPS

(6C-R) BARBARA GREENFIELD

BG 6/14

(6C) GEORGE ALEXANDER

GA 6/14

(6E) RUSSELL RHOADES

RRA 6/21

Date of Inspection: March 2, 1990

Date of Complaint Mailed: _____

Date of Settlement: _____

Remarks: _____

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
DALLAS HOUSTON AUSTIN
WASHINGTON, D.C.

WINSTEAD
SECHREST
& MINICK

A Professional Corporation
Attorneys & Counselors

(214) 742-1700
Telex 73-0051
Telecopier (214) 745-5390
Direct Dial: 745-5713

April 3, 1991

Hortense Haynes
Office of Regional Counsel (6C-R)
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY - Region VI
1445 Ross Avenue Suite 1200
Dallas, Texas 75202

Re: Docket No. SARA 6-90-603
In the Matter of: Gyro Chemical & Equipment
Company, Inc.

Dear Ms. Haynes:

Please find enclosed income statements and balance sheets for Gyro Chemical & Equipment Company, Inc. ("Gyro") for the calendar years ending 1987, 1988, 1989 and 1990. Pursuant to 40 C.F.R. section 22.22(a) and Rule 408 of the Federal Rules of Evidence, the income statements and balance sheets submitted to the United States Environmental Protection Agency by Gyro in regard to the above-referenced matter are solely for the purposes of settlement and should be considered confidential. Additionally, any offers should not be construed as an admission of liability.

I trust that this information, along with the income tax forms previously provided by Alton Payne, will provide you with sufficient information to consider further reducing the proposed administrative fine. I look forward to meeting with you on April 9, 1991, at 10:00 a.m. to discuss this matter.

57266

Page 2

In the meantime, should you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter D. James III", with a long horizontal flourish extending to the right.

Walter D. James III

WDJ:mal
Enclosures

261:D910403C.00
040391MAL2
ENVI G8800 19200

FORM 110

GYRO CHEMICAL & EQUIPMENT CO., INC.
INCOME STATEMENT - Adjusted
MONTH OF December 31, 1987

<u>INCOME</u>	<u>MONTH</u>	<u>YEAR TO DATE</u>
---------------	--------------	---------------------

301 Sales-Gyro	\$	
302 Sales-Aro		
303 Sales-Basic Chemical		
304 Sales-Misc. House Inv.		
305 Sales-Out Purchase		
307 Sales-Drums		
308 Sales-Chemiflex Hose		

GROSS INCOME

COST OF SALES

412 Purchases		
414 Supplies/Warehouse		
415 Commission/Misc.		
416 Commission/Sales		
418 Freight		

COST OF SALES

GROSS PROFITOTHER INCOME

309 Gain on Sale		
311 Misc. Income		
312 Interest C.D.		

OTHER INCOME

TOTAL GROSS PROFIT

GYRO CHEMICAL & EQUIPMENT CO., INC

INCOME STATEMENT -Adjusted

MONTH OF December 31, 1987

OPERATING

MONTH

YEAR TO DATE

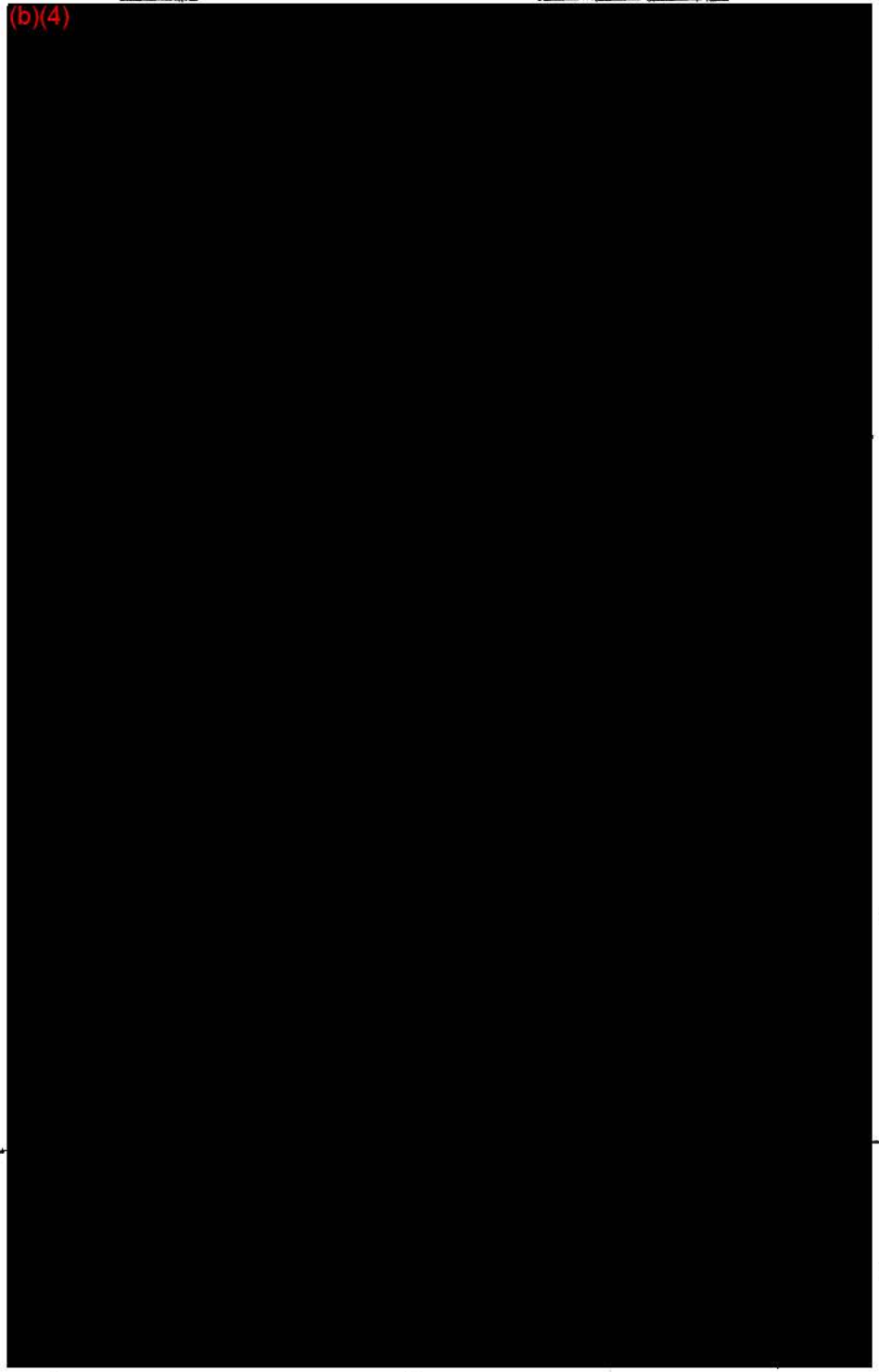
- 510 Salaries \$
- 512 Salaries-Officers
- 514 Royalties
- 516 Rent
- 518 Gas
- 520 Utilities
- 522 Advertising
- 524 Bad Debt
- 528 Insurance
- 529 Hospitalization
- 530 Depreciation
- 532 Promotions
- 533 Travel
- 534 Auto Expense
- 535 Car Allowance
- 536 Dues & Subscriptions
- 537 Office Supplies
- 538 Rental Equipment
- 539 Whse. Equipm Repairs
- 540 Contract Labor
- 541 Miscellaneous
- 542 Payroll Taxes
- 544 Advalorem Taxes
- 546 Franchise Taxes
- 547 Sales Tax
- 548 Interest Expense
- 550 Legal & Accounting
- 552 Building Maintenance
- 554 Donations
- 555 Pension Plan Expense
- 556 Discount on Sale
- 570 FIT Expense
- 571 Non-Deductible Expense

TOTAL EXPENSES

GROSS PROFIT

TOTAL EXPENSES

NET PROFIT (LOSS)



FM 110

GYRO CHEMICAL & EQUIPMENT CO., INC.

BALANCE SHEET - ADJUSTED

MONTH OF December 31, 1987ASSETS

TOTAL

101	Petty Cash	(b)(4)
102	Allied Bank	
108	Payroll	
109	C.D.-31Day	
112	A/R -Trade	
113	A/R-Employees	
115	A/R-Officers	
116	A/R-Other	
118	Prepaid Insurance	
119	Interest Receivables	
122	Organization Costs	
124	Refundable Deposits	
125	Other Assets	
126	Profit Sharing Plan	
131	Inventory-Gyro-Houston	
133	Inventory-Aro-Houston	
135	Inventory-Other-Houston	
137	Inventory-Distributors-Gyro-Houston	
140	Leasehold Improvement	
141	Auto & Trucks	
142	Furniture & Fixtures	
143	Warehouse Equipment	
144	Land	
159	Accumulated Depreciation	

TOTAL ASSETS

LIABILITIES AND CAPITAL

251	Accounts Payable	
252	Reserve for Pension	
253	FIT Payable	
254	FICA Payable	
255	Payroll Taxes Payable	
256	Payroll Tax Deposits	
261	Accrued Sales Tax	
263	Accounts Payable/Commission	
265	Federal Income Tax-Estimated	
272	Notes Payable	
281	Capital Stock	
286	Retained Earnings	
	Earnings Year-to-Date	

TOTAL LIABILITIES AND CAPITAL

FORM 110

P. 1

GYRO CHEMICAL & EQUIPMENT CO., INC.

INCOME STATEMENT

MONTH OF December, 1988 -After Adjusting EntriesINCOME

301 Sales-Gyro
302 Sales-Air
303 Sales-Basic Chemical
304 Sales-Misc. House Inventory
305 Sales-Out Purchases
307 Sales-Drums
308 Sales-Chemiflex Hose

GROSS SALES

306 Sales returns & allowances

NET SALES

COST OF SALES

412 Purchases
414 Supplies/Warehouse
415 Commission/Misc.
416 Commission/Sales
418 Freight

COST OF SALES

GROSS PROFITOTHER INCOME

309 Gain on Sale
311 Misc. Income
312 Interest C.D.
310 Casualty Loss on Bldg.
OTHER INCOME

TOTAL GROSS PROFIT

(b)(4)

GYRO CHEMICAL & EQUIPMENT CO., INC

INCOME STATEMENT

MONTH OF December, 1988 - After Adjusting Entries

OPERATING

MONTH

YEAR TO DATE

(b)(4)

510 Salaries \$
 512 Salaries-Officers
 514 Royalties
 516 Rent
 518 Gas
 520 Utilities
 522 Advertising
 524 Bad Debt
 528 Insurance
 529 Hospitalization
 530 Depreciation
 532 Promotions
 533 Travel
 534 Auto Expense
 535 Car Allowance
 536 Dues & Subscriptions
 537 Office Supplies
 538 Rental Equipment
 539 Whse. Equipm Repairs
 540 Contract Labor
 541 Miscellaneous
 542 Payroll Taxes
 544 Advalorem Taxes
 546 Franchise Taxes
 547 Sales Tax
 548 Interest Expense
 550 Legal & Accounting
 552 Building Maintenance
 554 Donations
 555 Pension Plan Expense
 556 Discount on Sale
 570 FIT Expense
 571 Non-Deductible Expense
 572 179 Depreciation

TOTAL EXPENSES

GROSS PROFIT

TOTAL EXPENSES

NET PROFIT (LOSS)

FORM 110

GYRO CHEMICAL & EQUIPMENT CO., INC.

BALANCE SHEET

MONTH OF December, 1988-After Adjusting EntriesASSETS

TOTAL

101 Petty Cash
102 Allied Bank
108 Payroll
109 C.D. - 31 Day
112 A/R-Trade
113 A/R-Employees
115 A/R-Officer
116 A/R-Other
118 Prepaid Insurance
119 Interest Receivable
120 Fund Transfer
122 Organization Cost
124 Refundable Deposits
125 Other Assets
126 Profit Sharing
131 Inventory-Gyro-Houston
133 Inventory-Aro-Houston
135 Inventory-Other-Houston
137 Inventory-Distributors-Gyro-Houston
140 Leasehold Improvement
141 Auto & Trucks
142 Furniture & Fixtures
143 Warehouse Equipment
144 Land
159 Accumulated Depreciation

(b)(4)

TOTAL ASSETS

251 Accounts Payable
252 Reserve for Pension
253 FIT Payable
254 FICA Payable
255 Payroll Taxes Payable
256 Payroll Tax Deposits
258 Accrued Bonus
260 Accrued Taxes
261 Accrued Sales Tax
262 Accrued Commission
263 Accounts Payable Commission
265 Federal Income Tax/Estimated
272 Notes Payable
281 Capital Stock
286 Retained Earnings
Earnings Year-to-Date

TOTAL LIABILITIES AND CAPITAL

GYRO CHEMICAL & EQUIPMENT CO., INC.

INCOME STATEMENT

MONTH OF December, 1989

INCOME MONTH YEAR TO DATE

01 Sales-Gyro
02 Sales-Aro
03 Sales-Basic Chemical
04 Sales-Misc.
05 Sales-Out Purchases
07 Sales-Drums
08 Sales-Chemiflex Hose

GROSS SALES

06 Sales returns & allowances

NET SALES

ST OF SALES

2 Purchases
4 Supplies/Warehouse
5 Commission/Misc.
6 Commission/Sales
8 Freight

COST OF SALES

GROSS PROFIT

OTHER INCOME

9 Gain on Sale
1 Misc. Income
2 Interest C.D.

OTHER INCOME

TOTAL GROSS PROFIT



GYRO CHEMICAL & EQUIPMENT CO., INC.

INCOME STATEMENT

MONTH OF December, 1989

OPERATING

MONTH

YEAR TO DATE

510 Salaries
 512 Salary-Officer
 514 Commission-Saad
 516 Rent
 518 Gas
 520 Utilities
 522 Advertising
 524 Bad Debt
 528 Insurance
 529 Hospitalization
 530 Depreciation
 532 Promotions
 533 Travel
 534 Auto Expense
 535 Car Allowance
 536 Dues & Subscriptions
 537 Office Supplies
 538 Rental Equipment
 539 Whse. Equip. Repairs
 540 Contract Labor
 541 Miscellaneous
 542 Payroll Taxes
 544 Advalorem Taxes
 546 Franchise Taxes
 547 Sales Tax
 548 Interest Expense
 550 Legal & Accounting
 552 Building Maintenance
 554 Donations
 555 Pension Plan Expense
 556 Discount on Sale
 570 FIT Expense
 571 Non-Deductible Expense
 572 179 Depreciation

\$

(b)(4)

TOTAL EXPENSES

GROSS PROFIT

TOTAL EXPENSES

NET PROFIT (LOSS)

GYRO CHEMICAL & EQUIPMENT CO., INC.

BALANCE SHEET

MONTH OF December, 1989ASSETS

TOTAL

101 Petty Cash
102 Allied Bank
108 Payroll
109 C.D.-31Day
112 A/R-Trade
113 A/R-Employees
115 A/R-Officer
116 A/R-Other
113 Prepaid Insurance
119 Interest Receivable
120 Fund Transfer
122 Organization Cost
124 Refundable Deposits
125 Other Assets
126 Profit Sharing
131 Inventory-Gyro-Houston
133 Inventory-Aro-Houston
135 Inventory-Other-Houston
137 Inventory-Distributors-Gyro-Houston
140 Leasehold Improvement
141 Auto & Trucks
142 Furniture & Fixtures
143 Warehouse Equipment
144 Land
159 Accumulated Depreciation

TOTAL ASSETS

251 Accounts Payable
252 Reserve for Pension
253 FIT Payable
254 FICA Payable
255 Payroll Taxes Payable
256 Payroll Tax Deposits
258 Accrued Bonus
260 Accrued Taxes
261 Accrued Sales Tax
262 Accrued Commission
263 Accounts Payable Commission
265 Federal Income Tax/Estimated
272 Notes Payable
281 Capital Stock
286 Retained Earnings
Earnings Year-to-Date

TOTAL LIABILITIES AND CAPITAL

(b)(4)

GYRO CHEMICAL & EQUIPMENT CO., INC.

INCOME STATEMENT

MONTH OF December, 1990

<u>INCOME</u>	MONTH	YEAR TO DATE
---------------	-------	--------------

301 Sales-Gyro	<div>(b)(4)</div>
302 Sales-Aro	
303 Sales-Basic Chemical	
304 Sales-Misc.	
305 Sales-Out Purchases	
307 Sales-Drums	
308 Sales-Chemiflex Hose	

GROSS SALES

306 Sales returns & allowances

NET SALES

COST OF SALES

412 Purchases	<div>(b)(4)</div>
414 Supplies/Warehouse	
415 Commission/Misc.	
416 Commission/Sales	
418 Freight	

COST OF SALES

GROSS PROFITOTHER INCOME

309 Gain on Sale	<div>(b)(4)</div>
311 Misc. Income	
312 Interest C.D.	

OTHER INCOME

TOTAL GROSS PROFIT

GYRO CHEMICAL & EQUIPMENT CO., INC.

INCOME STATEMENT

MONTH OF December, 1990

OPERATING

MONTH

YEAR TO DATE

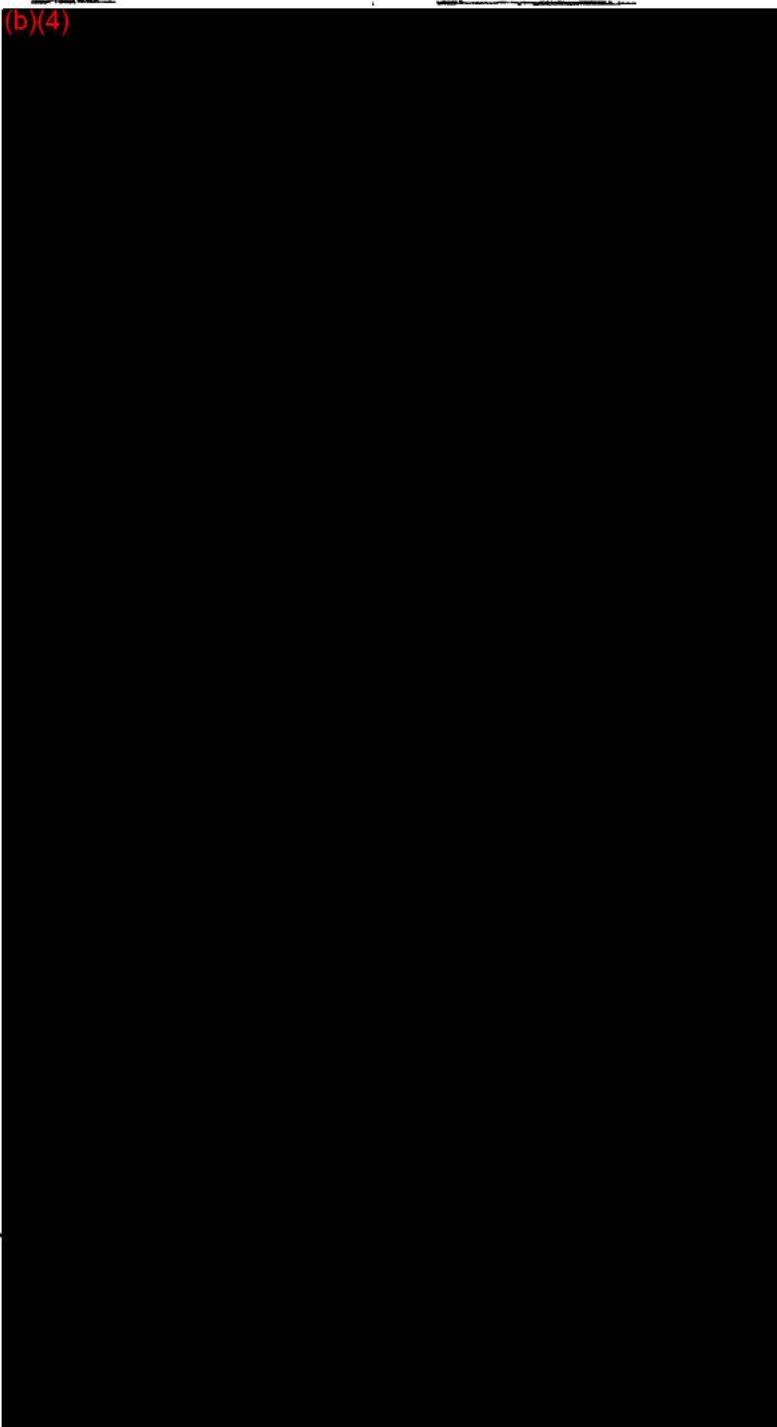
- 510 Salaries
- 512 Salary-Officer
- 514 Commission-Saad
- 516 Rent
- 518 Gas
- 520 Utilities
- 522 Advertising
- 524 Bad Debt
- 528 Insurance
- 529 Hospitalization
- 530 Depreciation
- 532 Promotions
- 533 Travel
- 534 Auto Expense
- 535 Car Allowance
- 536 Dues & Subscriptions
- 537 Office Supplies
- 538 Rental Equipment
- 539 Whse. Equip. Repairs
- 540 Contract Labor
- 541 Miscellaneous
- 542 Payroll Taxes
- 544 Advalorem Taxes
- 546 Franchise Taxes
- 547 Sales Tax
- 548 Interest Expense
- 550 Legal & Accounting
- 552 Building Maintenance
- 554 Donations
- 555 Entertainment-100%
- 556 Discount on Sale
- 570 FIT Expense
- 571 Non-Deductible Expense
- 572 179 Depreciation

TOTAL EXPENSES

GROSS PROFIT

TOTAL EXPENSES

NET PROFIT (LOSS)



FORM 110

P. 3

GYRO CHEMICAL & EQUIPMENT CO., INC.

BALANCE SHEET

MONTH OF December, 1990ASSETSTOTAL

101 Petty Cash
102 Allied Bank
103 Payroll
109 C.D. - 31 Day
112 A/R-Trade
113 A/R-Employees
115 A/R-Officer
116 A/R-Other
113 Prepaid Insurance
119 Interest Receivable
120 Fund Transfer
122 Organization Cost
124 Refundable Deposits
125 Other Assets
126 Profit Sharing
131 Inventory-Gyro-Houston
133 Inventory-Aro-Houston
135 Inventory-Other-Houston
137 Inventory-Distributors-Gyro-Houston
140 Leasehold Improvement
141 Auto & Trucks
142 Furniture & Fixtures
143 Warehouse Equipment
144 Land
159 Accumulated Depreciation

TOTAL ASSETS

251 Accounts Payable
252 Reserve for Pension
253 FIT Payable
254 FICA Payable
255 Payroll Taxes Payable
256 Payroll Tax Deposits
258 Accrued Bonus
260 Accrued Taxes
261 Accrued Sales Tax
262 Accrued Commission
263 Accounts Payable Commission
265 Federal Income Tax/Estimated
272 Notes Payable
281 Capital Stock
286 Retained Earnings
Earnings Year-to-Date

TOTAL LIABILITIES AND CAPITAL

(b)(4)

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
DALLAS HOUSTON AUSTIN
LONDON WASHINGTON, D.C.

WINSTEAD
SECHREST
& MINICK

A Professional Corporation
Attorneys & Counselors

(214) 742-1700
Telex 73-0051
Telecopier (214) 745-5390
Direct Dial: 5713

September 25, 1991

VIA CERTIFIED MAIL NO. P435 652 567
RETURN RECEIPT REQUESTED

Treasurer of the United States of America
U. S. Environmental Protection Agency
Superfund-Gyro Chemical & Equipment Co., Inc.
P. O. Box 360582M
Pittsburg, PA 15251

Re: In the Matter of Gyro Chemical & Equipment Com-
pany, Inc.; Docket No. SARA-6-90-603

Dear Sir:

Please find enclosed check nos. 4113 and 4114 in the amounts of \$6,220.00 and \$32,660.00, respectively, payable to Treasurer of the United States of America. These checks are delivered pursuant to the Consent Agreement entered in the above-referenced matter.

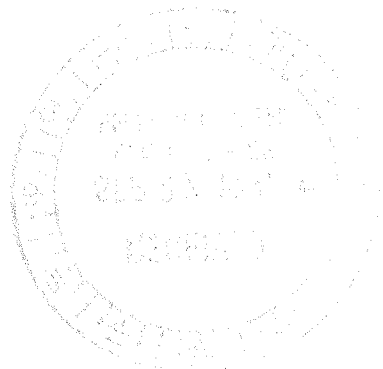
Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,


Walter D. James III

WDJ:mal
Enclosures
cc: Steve Mason (Via CM-RRR)
Hortense Haynes (Via CM-RRR)

261:D910925B.30
092591MAL1
ENVI G8800 19200



5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
DALLAS HOUSTON AUSTIN
LONDON WASHINGTON, D.C.

WINSTEAD
SECHREST
& MINICK

A Professional Corporation
Attorneys & Counselors

September 20, 1991



Jimmy Burk, Chairperson
DEER PARK LOCAL EMERGENCY PLANNING
COMMITTEE
P. O. Box 700
Deer Park, TX 77536-0700

Re: In the Matter of Gyro Chemical & Equipment
Company, Inc.; Docket No. SARA-6-90-603

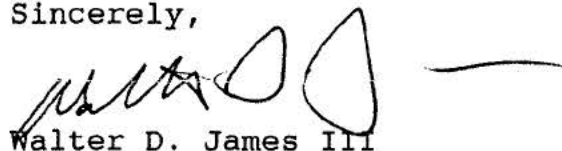
Dear Mr. Burk:

Please find enclosed check no. 4102 in the amount of \$3,000.00 payable to Deer Park Local Emergency Planning Committee. This check is delivered pursuant to the Consent Agreement entered in the above-referenced matter.

As provided by the Consent Agreement, a representative of Gyro is required to attend the regularly scheduled meetings of the Local Emergency Planning Committee For Deer Park, Texas. In that regard, please forward to me a schedule of the meetings planned for the balance of this year and for calendar year 1992.

Thank you for your consideration in this regard. If you have any questions, please do not hesitate to contact me.

Sincerely,


Walter D. James III

WDJ:mal
Enclosure
cc: Steve Mason
Hortense Haynes

261:D910920C.30
092091MAL1
ENVI G8800 19200

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202

IN THE MATTER OF:	)	Docket No. SARA 6-90-003
)	
Gyro Chemical and Equipment	)	Administrative Complaint under
Company, Inc.	)	the Emergency Planning and
5206 Railroad Avenue	)	Community Right-to-Know Act
Deer Park, Texas 77536	)	(Sections 304, 311, and 312)
	)	and Sections 103 and 109 of the
Respondent	)	Comprehensive Environmental
	)	Response, Compensation, and
	)	Liability Act as amended, 42
	)	U.S.C. Sections 9603 and 9609.
)	

ADMINISTRATIVE COMPLAINT

This Administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. Section 11045 and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9609. The Administrator has delegated this authority under EPCRA to the EPA Regional Administrators by EPA delegation 22-3, dated September 13, 1987, and under CERCLA to the EPA Regional Administrators by EPA delegation 14-31, dated September 13, 1987. The Regional Administrator of EPA Region 6 has delegated this authority under EPCRA to the Director, Environmental Services Division by EPA delegation R6-22-3, dated April 18, 1988 and under CERCLA to the Director, Environmental Services Division by EPA delegation

R6-14-31, dated April 16, 1990. The Director, Environmental Services Division, EPA Region 6 ("Complainant"), issues this Administrative Complaint and Notice of the Opportunity to Request a Hearing against Gyro Chemical and Equipment Company, Inc. ("Respondent") for violations of CERCLA Section 103 and EPCRA Sections 304, 311 and 312, and alleges the following:

PRELIMINARY STATEMENT

1. Section 102(a) of CERCLA, 42 U.S.C. Section 9602, required the Administrator of U.S. EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance, the release of which was required to be reported under Section 103(a) of CERCLA. U.S. EPA has published and amended such a list, including the corresponding reportable quantities for those substances. This list is codified at 40 CFR Part 302. Initially published on April 4, 1985 (50 Federal Register 3474), this list was amended on September 29, 1986 (51 FR 34541), on December 22, 1986 (52 FR 45767), on May 24, 1989 (54 FR 22525), and on August 14, 1989 (54 FR 33418 and 33426).

2. Section 103(a) of CERCLA requires a person in charge of a facility or vessel, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity ("RQ"), to immediately notify the National Response Center.

3. Section 302 of EPCRA, 42 U.S.C. Section 11002, required the Administrator to publish a list of substances designated as "extremely hazardous substances." U.S. EPA has published and amended such a list, including the corresponding reportable quantities for those substances. This list is codified at 40 C.F.R. Part 355 Appendix A and B. Initially published on November 17, 1986 (51 Federal Register 41570), this list includes the revisions of April 22, 1987 (52 FR 13378), December 17, 1987 (52 FR 48072), and February 25, 1988 (53 FR 5574).

4. Section 304(a) of EPCRA, 42 U.S.C. Section 11004(a), requires the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to immediately notify each State Emergency Response Commission ("SERC") and the emergency coordinator for each Local Emergency Planning Committee ("LEPC") affected when there has been a release of a hazardous substance or extremely hazardous substance ("EHS") in an amount equal to or greater than the reportable quantity ("RQ").

5. Section 304(c) of EPCRA, 42 U.S.C. Section 11004(c), requires the owner or operator of a facility to provide a written follow-up notice as soon as practicable after a release occurs that is required to be reported under Section 304(a) of EPCRA, 42 U.S.C. Section 11004(a). Such written follow-up notice must be provided to the community emergency coordinator for each Local Emergency Planning Committee (LEPC) and to each State Emergency Response Commission (SERC) affected by the release.

6. Section 311 of EPCRA, 42 U.S.C. Section 11021, and the regulations found at 40 C.F.R. Part 370, require that the owner or operator of a facility which is required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., ("OSHA"), shall submit to the LEPC, the SERC and the fire department with jurisdiction over the facility, on or before October 17, 1987 (or three months after the owner or operator first becomes subject to OSHA), a MSDS for each such chemical present at the facility in quantities equal to or greater than 10,000 pounds (or a list of such chemicals as described in Section 311 of EPCRA). If said hazardous chemical is an "extremely hazardous substance," as designated under Section 302 of EPCRA, 42 U.S.C. Section 11002, the threshold for reporting shall be 500 pounds or the chemical specific "threshold planning quantity" ("TPQ") designated by EPA at 40 CFR Part 355 Appendices A and B, whichever is less.

7. Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a), and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility required to prepare or have available a MSDS for a hazardous chemical under the Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C. Section 651 et seq., shall submit to the LEPC, the SERC, and the local fire department with jurisdiction over the facility, by March 1, 1988, (and annually thereafter), a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40

C.F.R. Part 370) containing the information required by that section.

8. Respondent, Gyro Chemical and Equipment Company, Inc. is a corporation incorporated under the laws of the State of Texas, and is doing business in Deer Park, Harris County, Texas. Gyro Chemical and Equipment is within the jurisdiction of the Deer Park LEPC.

9. Respondent is a "person" as defined under Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21) and Section 329(7) of EPCRA, 42 U.S.C. Section 11049(7).

10. Respondent is the owner and/or operator and is in charge of a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. Section 11049(4), and CFR Section 372.3.

11. Respondent owned and/or operated the "Facility" during the relevant period(s) described below.

12. At all times relevant to this Complaint, hazardous chemicals and extremely hazardous substances were produced, used, or stored by Respondent as defined under Section 311(e) of EPCRA, 42 U.S.C. Section 11021(e) and under 29 CFR Part 1910.1200(c).

VIOLATIONS

COUNT I

13. The allegations contained in paragraphs 1 through 12 are incorporated herein by reference.

14. Methyl Mercaptan (Chemical Abstract Service # 74-93-1) is a hazardous substance as defined under Section 101(14) of CERCLA, U.S.C. Section 9601(14). The Reportable Quantity (RQ) for Methyl Mercaptan is 100 pounds, as set forth in 40 CFR Part 302, Table 302.4.

15. On or about December 25, 1989, while Respondent was in charge of the facility, there was a release from the facility of Methyl Mercaptan in an amount greater than the Reportable Quantity.

16. On March 2, 1990, subsequent to the release, the U.S. EPA visited Respondent's facility and Respondent consented to an EPCRA inspection.

17. During the course of the inspection, Respondent admitted that on or around December 25, 1989, while Respondent was the owner or operator of the facility, there was a release from the facility of an estimated seven-hundred and fifty (750) pounds of Methyl Mercaptan. Two drums containing the methyl mercaptan ruptured due to cold weather, releasing the entire contents of both drums into the environment. The vapors from the liquid migrated off-site.

18. Respondent had knowledge of the release on or before January 3, 1990.

19. As of March 1, 1990, Respondent had not provided notification to the National Response Center of the release of Methyl Mercaptan.

20. Respondent is in violation of the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. Section 9603(a) in that Respondent did not immediately provide notice to the National Response Center after the release occurred.

Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. Section 9609.

COUNT II

21. The allegations contained in paragraphs 1 through 20 are incorporated herein by reference.

22. Methyl Mercaptan (CAS # 74-93-1) is an extremely hazardous substance as defined under Section 329(3) of EPCRA, 42 U.S.C. Section 11049(3), and designated under Section 302 of EPCRA, 42 U.S.C. Section 11002. The Reportable Quantity (RQ) for Methyl Mercaptan is 100 pounds, as set forth in Appendices A and B of 40 CFR Part 355.

23. On on about December 25, 1989, while Respondent was the owner or operator of the facility, there was a release from the facility of Methyl Mercaptan in an amount greater than the Reportable Quantity.

24. Respondent had knowledge of the release on or before January 3, 1990.

25. The "release" occurred in a manner which would require notice under Section 103(a) of CERCLA, 42 U.S.C. Section 9603(a).

26. As of March 2, 1990, Respondent had not provided the initial notification to the Deer Park LEPC emergency coordinator

or Texas SERC as required by Section 304(a) of EPCRA, 42 U.S.C. Section 11004(a).

27. Respondent is in violation of the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. Section 11004(a) in that Respondent did not immediately provide notice to the Deer Park LEPC emergency coordinator or the Texas SERC after the release occurred. Respondent is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT III

28. The allegations contained in paragraphs 1 through 27 are incorporated herein by reference.

29. As of March 2, 1990, Respondent had not provided the follow-up written notice to the Deer Park LEPC or Texas SERC as required by Section 304(c) of EPCRA, 42 U.S.C. Section 11004(c). Complainant alleges that 58 days have passed since it became practicable to notify under Section 304(c) of EPCRA, 42 U.S.C. Section 11004(c).

30. Respondent is in violation of the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. Section 11004(c), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT IV

31. The allegations contained in paragraphs 1 through 30 are incorporated herein by reference.

32. Hydrofluoric Acid (CAS# 7664-39-3) is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. Section 11049(3) and designated under Section 302 of EPCRA, 42 U.S.C. Section 11002. The Section 311 threshold quantity for Hydrofluoric Acid is 100 pounds as set forth in 40 C.F.R. Part 370.20.

33. Hydrofluoric Acid is also a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. Section 11049(5).

34. During calendar year 1989, Respondent had Hydrofluoric Acid present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. Part 370.20.

35. Respondent is required to prepare, or have available, an MSDS for Hydrofluoric Acid under the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., and regulations promulgated under that Act.

36. Respondent did not submit on or before October 17, 1988 (or 3 months after the owner or operator first became subject to OSHA), a MSDS for each chemical or a list of all chemicals, to the following:

- (1) the LEPC, City of Deer Park;
- (2) the SERC, Texas Department of Health; and
- (3) the fire department with jurisdiction over the facility, Deer Park Office of Emergency Management.

37. Respondent is in violation of the reporting requirements of Section 311 of EPCRA, 42 U.S.C. Section 11021, and is

therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT V

38. The allegations contained in paragraphs 1 through 37 are incorporated herein by reference.

39. Nitric Acid (CAS# 7697-37-2) is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. Section 11049(3) and designated under Section 302 of EPCRA, 42 U.S.C. Section 11002. The Section 311 threshold quantity for Nitric Acid is 500 pounds as set forth in 40 C.F.R. Part 370.20.

40. Nitric Acid is also a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. Section 11049(5).

41. During calendar year 1989, Respondent had Nitric Acid present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. Part 370.20.

42. Respondent is required to prepare, or have available, an MSDS for Nitric Acid under the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., and regulations promulgated under that Act.

43. Respondent did not submit on or before October 17, 1988 (or 3 months after the owner or operator first became subject to OSHA), a MSDS for each chemical or a list of all chemicals, to the following:

- (1) the LEPC, City of Deer Park;
- (2) the SERC, Texas Department of Health; and

(3) the fire department with jurisdiction over the facility, Deer Park Office of Emergency Management.

44. Respondent is in violation of the reporting requirements of Section 311 of EPCRA, 42 U.S.C. Section 11021, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT VI

45. The allegations contained in paragraphs 1 through 44 are incorporated herein by reference.

46. Methyl Mercaptan (CAS# 74-93-1) is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. Section 11049(3) and designated under Section 302 of EPCRA, 42 U.S.C. Section 11002. The Section 311 threshold quantity for Methyl Mercaptan is 500 pounds as set forth in 40 C.F.R. Part 370.20.

47. Methyl Mercaptan is also a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. Section 11049(5).

48. During calendar year 1989, Respondent had Methyl Mercaptan present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. Part 370.20.

49. Respondent is required to prepare, or have available, an MSDS for Methyl Mercaptan under the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., and regulations promulgated under that Act.

50. Respondent did not submit on or before October 17, 1988 (or 3 months after the owner or operator first became subject to OSHA), a MSDS for each chemical or a list of all chemicals, to the following:

- (1) the LEPC, City of Deer Park;
- (2) the SERC, Texas Department of Health; and
- (3) the fire department with jurisdiction over the facility, Deer Park Office of Emergency Management.

51. Respondent is in violation of the reporting requirements of Section 311 of EPCRA, 42 U.S.C. Section 11021, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT VII

52. The allegations contained in paragraphs 1 through 51 are incorporated herein by reference.

53. Sodium Hydroxide (CAS # 1310-73-2) is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. Section 11049(5). The Section 311 threshold quantity for Sodium Hydroxide is 10,000 pounds as set forth in 40 C.F.R. Part 370.20.

54. During calendar year 1989, Respondent had Sodium Hydroxide present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. Part 370.20.

55. Respondent is required to prepare, or have available, an MSDS for Sodium Hydroxide under the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., and regulations promulgated under that Act.

56. Respondent did not submit on or before October 17, 1988 (or 3 months after the owner or operator first became subject to OSHA), a MSDS for each chemical or a list of all chemicals, to the following:

- (1) the LEPC, City of Deer Park;
- (2) the SERC, Texas Department of Health; and
- (3) the fire department with jurisdiction over the facility, Deer Park Office of Emergency Management.

57. Respondent is in violation of the reporting requirements of Section 311 of EPCRA, 42 U.S.C. Section 11021, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

Count VIII

58. The allegations contained in paragraphs 1 through 57 are incorporated herein by reference.

59. During calendar years 1988 and 1989, Respondent had hazardous chemicals present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. Part 370.20.

60. Respondent failed to submit a completed emergency and hazardous chemical inventory form by March 1, 1989, and March 1, 1990, for these hazardous chemicals to the following:

the LEPC, City of Deer Park;

61. Respondent is in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT IX

62. The allegations contained in paragraphs 1 through 61 are incorporated herein by reference.

63. Respondent failed to submit a completed emergency and hazardous chemical inventory form by March 1, 1989, and March 1, 1990, for hazardous chemicals to the following:

the SERC, Texas Department of Health; and

64. Respondent is in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

COUNT X

65. The allegations contained in paragraphs 1 through 64 are incorporated herein by reference.

66. Respondent failed to submit a completed emergency and hazardous chemical inventory form by March 1, 1989, and March 1, 1990, for hazardous chemicals to the following:

the fire department with jurisdiction over the facility, Deer Park Office of Emergency Management.

67. Respondent is in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. Section 11045.

PROPOSED CERCLA PENALTY

Pursuant to CERCLA Section 109, the United States Environmental Protection Agency is authorized to assess a penalty by Administrative Order not to exceed \$25,000 per day for each day a violation continues under CERCLA Section 103. Section 109 also states that in calculating the penalty, the following may be considered: the nature; circumstances; extent; gravity of Respondent's violations; degree of culpability; economic benefit or savings resulting from the violation; and such other matters as justice requires.

Complainant, taking into consideration the factors required by Section 109, alleges that Respondent is subject to penalties for violation of CERCLA Section 103 as set forth in paragraphs 13 to 20 above. Complainant proposes a penalty totaling \$16,500.00 pursuant to the authority of Section 109 as set forth below (see also Attachment I):

Count I	U.S.C.	Section 9603(a)	\$16,500.00
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PROPOSED EPCRA PENALTY

Pursuant to EPCRA Section 325(b)(2), the United States Environmental Protection Agency is authorized to assess a penalty by Administrative Order not to exceed \$25,000 per day for each day a violation continues under EPCRA Section 304(a) and (c). Pursuant to EPCRA Section 325(c), the United States Environmental Protection Agency is authorized to assess a penalty by Administrative Order not to exceed \$25,000 per day for each day a

violation continues under EPCRA Section 312. Pursuant to EPCRA Section 325(c), the United States Environmental Protection Agency is authorized to assess a penalty by Administrative Order not to exceed \$10,000 per day for each day a violation continues under EPCRA Section 311. Section 325 also states that in calculating the penalty, the following may be considered: the nature; circumstances; extent; gravity of Respondent's violations; degree of culpability; economic benefit or savings resulting from the violation; and such other matters as justice requires.

Complainant, taking into consideration the factors required by Section 325, alleges that Respondent is subject to penalties for violation of EPCRA Section 304(a) and (c), 311, and 312, as set forth in paragraphs 21 to 67 above. Complainant proposes a penalty totaling \$84,350.00 pursuant to the authority of Section 325 as set forth below (see also Attachment II):

Count II	42 U.S.C. Section 11004(a)	\$16,500.00
Count III	42 U.S.C. Section 11004(c)	\$29,900.00
Count IV	42 U.S.C. Section 11021	\$ 3,300.00
Count V	42 U.S.C. Section 11021	\$ 3,300.00
Count VI	42 U.S.C. Section 11021	\$ 3,300.00
Count VII	42 U.S.C. Section 11021	\$ 3,300.00
Count VIII	42 U.S.C. Section 11022(a)	\$ 8,250.00
Count IX	42 U.S.C. Section 11022(a)	\$ 8,250.00
Count X	42 U.S.C. Section 11022(a)	\$ 8,250.00

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within 20 days of service of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge on the Complaint to contest any material fact and/or penalty amount. To request a hearing Respondent must file a written Answer within twenty (20) days of receipt of this Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer shall contain: (1) a statement of the facts which constitute the grounds of a defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

If Respondent fails to file a written Answer within twenty (20) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer within twenty (20) days may result in the filing of a Motion for Default. The Default Order may impose the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, ("Consolidated Rules"), a copy of which is provided as Attachment III. Respondent must send any request for a hearing to:

Regional Hearing Clerk
Office of Regional Counsel (6C)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Hortense Haynes, the attorney assigned to represent U.S. EPA in this matter, at:

Ms. Hortense Haynes
Office of Regional Counsel (6C-R)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 655-2120

If the Respondent fails to request a hearing within the designated time period or fails to appear at a hearing, EPA may issue a Final Order assessing the proposed administrative penalty. In accordance with CERCLA 109(a)(4), U.S.C. Section 9609(a)(4) and EPCRA Section 325(f), 42 U.S.C. Section 11045(f), Respondent may obtain review of any Final Order concerning counts alleged under EPCRA by filing a notice of appeal in the appropriate District Court of the United States within 30 days from the date of such Final Order and by simultaneously sending a copy of such notice by certified mail to the EPA Administrator.

TERMS OF PAYMENT

Payment of the penalties may be forwarded to EPA. Payment for CERCLA violations must be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be mailed to:

U.S. EPA Region 3
Attention: Superfund Accounting
P.O. Box 360582M
Pittsburgh, PA 15251

Payment of penalties for the EPCRA violations must be made by certified or cashier's check payable to the "Treasurer, United States of America" and shall be sent to:

Regional Hearing Clerk
Office of Regional Counsel (6C)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

The check(s) should reference the name and docket number of this administrative complaint.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Ms. Hortense Haynes
Office of Regional Counsel (6C-R)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 655-2120

Please note that a request for the scheduling of, or participation in, an informal settlement conference does not extend the


twenty (20) day period during which a written Answer and Request for Hearing must be filed as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

The U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or the Administrative Law Judge after issuance of a Complaint. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, Judicial Officer, Administrative Law Judge, Regional Administrator, nor the Regional Judicial Officer, shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding.

Date:



Russell F. Rhoades
Director
Environmental Services Division (6E)
U.S. EPA, Region 6

ATTACHMENT I

Detailed Summary of CERCLA Proposed Penalty

CERCLA Section Violated	Nature of Violation	Penalty
Section 103(a)	Failure of Respondent to immediately notify the National Response Center of a release of Methyl Mercaptan above its Reportable Quantity.	\$16,500.00

Payment must be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be mailed to:

U.S. EPA Region 3
Attention: Superfund Accounting
P.O. Box 360582M
Pittsburgh, PA 15251

ATTACHMENT II

Detailed Summary of EPCRA Proposed Penalty

EPCRA Sections Violated	Nature of Violation	Penalty
Section 304(a)	Failure of Respondent to immediately notify all affected LEPCs and SERC of a release of Methyl Mercaptan above its Reportable Quantity.	\$16,500.00
Section 304(c)	Failure of Respondent to provide written follow-up report as soon as practical to all affected LEPCs and SERC of release of Methyl Mercaptan above the Reportable Quantity.	\$29,900.00
Section 311(a)	Failure of Respondent to submit MSDSs or list for 4 chemicals to LEPC, SERC, or fire department.	\$13,200.00
Section 312(a)	Failure of Respondent to submit Section 312 Tier I or Tier II form to the SERC, LEPC, or fire department for calendar years 1988 and 1989 for 4 chemicals.	\$24,750.00

Total for EPCRA: \$84,350.00

Payment must be made by certified or cashier's check payable to "Treasurer, United States of America" and shall be mailed to:

Regional Hearing Clerk
Office of Regional Counsel (6C)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of this "ADMINISTRATIVE COMPLAINT", Docket No. SARA 6-90-003, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, and a copy of the Administrative Penalty Procedures, Interim Final Rule, 54 FR 21174, dated May 16, 1989, to the addresses listed below:

Mr. Earl Moore
President
Gyro Chemical and Equipment Company, Inc.
5206 Railroad Avenue
Deer Park, Texas 77536

6/22/90
Date

Steve M. Mason
Ms. Hortense Haynes
Office of Regional Counsel (6C-R)
U.S. EPA Region 6 (6C)
1445 Ross Avenue
Dallas, Texas 75202



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP -6 10 9 52

REGION 6

EPA REGION 6

IN THE MATTER OF

Gyro Chemical and Equipment
Company, Inc.
5206 Railroad Avenue
Deer Park, Texas 77536

Respondent

)
) Docket No. SARA 6-90-003
)
) Administrative Complaint
) issued under EPCRA Section
) 325 and CERCLA Section 109
)
)
)

FINAL ORDER

The undersigned accepts and incorporates, by reference into this Final Order, the foregoing Consent Agreement and Order.

8/6/90
Date

Robert E. Layton Jr., P.E.
Regional Administrator
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

1991 SEP -6 11 9:53

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	Docket No. SARA 6-90-003
)	
Gyro Chemical and Equipment	)	CONSENT AGREEMENT
Company, Inc.	)	AND
5206 Railroad Avenue	)	FINAL ORDER
Deer Park, Texas 77536)	
)	
RESPONDENT)	
)	

CONSENT AGREEMENT

I. INTRODUCTION AND JURISDICTION

A. This proceeding for the assessment of a civil penalty was instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRTKA), 42 U.S.C. 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9609. The proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for a Hearing ("Complaint") served upon Gyro Chemical and Equipment Company, Inc.

("Respondent" or "Gyro") by the Director, Environmental Services Division, of the United States Environmental Protection Agency Region 6 ("Complainant" or "EPA") on or about June 22, 1990, by certified mail, return receipt requested.

B. The Complaint states a claim upon which relief could be granted, and alleges that Respondent doing business in Deer Park, Harris County, Texas, violated the notification

requirements of Sections 304(a), 304(c), 311(a), and 312(a) of EPCRTKA, 42 U.S.C., Section 11045, and Section 103 of CERCLA, 42 U.S.C., Section 9609, which involves failure to report an accidental release of a hazardous substance to proper Federal, State, and local agencies, and failure to report chemical inventories to State and local agencies.

C. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint, and Respondent admits to EPA's authority to enforce this Consent Agreement and Final Order; however, Respondent neither admits nor denies the Findings of Fact or Conclusions of Law or any specific allegation contained in the Complaint or this Consent Agreement.

D. For purposes of this proceeding only, Respondent hereby expressly waives its rights to a hearing on any issue of Law or Fact set forth in the Complaint or any Findings of Fact or Conclusions of Law set forth in this Consent Agreement and Final Order. Further, for the purpose of this proceeding and for entering into this Consent Agreement, Respondent waives all defenses which have been or could have been raised to claims set forth in the Complaint.

E. This Consent Agreement and Final Order shall apply to and be binding upon EPA, Respondent, and Respondent's agents, successor, and assigns. The signatories to this Consent Agreement and Final Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Agreement. No change in the ownership or corporate

status of the Respondent shall alter its responsibilities under this Consent Agreement.

F. Respondent consents to the issuance of this Consent Agreement and Final Order, consents to the assessment of the civil penalty amount noted herein, and for the purpose of settlement of the Complaint, Respondent agrees to the payment of the penalty amount totaling \$38,880 (THIRTY-EIGHT THOUSAND, EIGHT HUNDRED AND EIGHTY DOLLARS). In addition to the payment of the penalty, Respondent agrees to complete the provisions listed under SECTION V, POLLUTION PREVENTION PROJECTS.

G. The parties agree that full and complete payment of the civil penalties in the manner directed by this Consent Agreement, and completion of the provisions of SECTION V, POLLUTION PREVENTION PROJECTS, shall result in the complete settlement and satisfaction of the provisions of the Complaint.

II. PRELIMINARY STATEMENT

A. CERCLA 103(a) requires a person in charge of a facility or vessel, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the RQ, to immediately notify the National Response Center.

B. EPCRTKA 304(a), 42 U.S.C. 11004(a), requires the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to immediately notify each State Emergency Response Commission ("SERC") and the emergency

coordinator for each Local Emergency Planning Committee ("LEPC") affected when there has been a release of a hazardous substance or EHS in an amount equal to or greater than the RQ.

C. EPCRTKA 304(c), 42 U.S.C. 11004(c), requires the owner or operator of a facility to provide a written follow-up notice as soon as practicable after a release occurs requiring reporting under EPCRTKA 304(a), 42 U.S.C. 11004(a). Such written follow-up notice must be provided to the community emergency coordinator for each LEPC and to each SERC affected by the release.

D. **Methyl Mercaptan** (CAS # 74-93-1) is a hazardous substance as defined under CERCLA 101(14), U.S.C. 9601(14). The RQ for **Methyl Mercaptan** is 100 pounds, as set forth in 40 C.F.R. 302, Table 302.4.

E. **Methyl Mercaptan** is an EHS as defined under EPCRTKA 329(3), U.S.C. 11049(3) and designated under EPCRTKA 302, 42 U.S.C. 11002. Additionally, the TPQ for **Methyl Mercaptan** is 500 pounds, as set forth in 40 C.F.R. 355, Appendix A and B. **Methyl Mercaptan** is also a "hazardous chemical" as defined under Section EPCRTKA 329(5), 42 U.S.C. 11049(5).

F. **Nitric Acid** (CAS # 7697-37-2) is an EHS as defined under EPCRTKA 329(3), U.S.C. 11049(3) and designated under EPCRTKA 302, 42 U.S.C. 11002. Additionally, the TPQ for **Nitric Acid** is 500 pounds, as set forth in 40 C.F.R. 355, Appendix A and B. **Nitric Acid** is also a "hazardous chemical" as defined under EPCRTKA 329(5), 42 U.S.C. 11049(5).

G. **Sodium Hydroxide** (CAS # 1310-73-2) is a hazardous chemical as defined under EPCRTKA 311, U.S.C. 11021. The Threshold Quantity for **Sodium Hydroxide** is 10,000 pounds as set forth in 40 C.F.R. 370.20.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Respondent, Gyro Chemical and Equipment Company, Inc., is a corporation incorporated under the laws of the State of Texas, and is doing business in the State of Texas.

B. Respondent is a "person" as defined under CERCLA 101(21), 42 U.S.C. 9601(21) and EPCRTKA 329(7), 42 U.S.C. 11049(7).

C. Respondent is the owner and/or operator of a "facility" as that term is defined at CERCLA 109(9), 42 U.S.C. 9601(9), EPCRTKA 329(4), 42 U.S.C. 11049(4), and 40 C.F.R. 372.3.

D. Respondent owned and/or operated the "facility" during the relevant period(s) described below, and Respondent became subject to the provisions of EPCRTKA 311 on September 24, 1988, and the provisions of EPCRTKA 312 on March 1, 1989.

E. At all times relevant to this Complaint, hazardous chemicals and EHSs were produced, used, or stored by Respondent as defined under EPCRTKA 311(e), 42 U.S.C. 11021(e) and under 29 C.F.R. 1910.1200(c).

F. On or about December 25, 1989, while Respondent was in charge of the facility, there was a release of Methyl Mercaptan from the facility in an amount greater than the RQ.

G. On March 2, 1990, subsequent to the release, Complainant visited Respondent's facility and Respondent consented to an EPCRTKA inspection.

H. During the course of the inspection, Respondent acknowledged that on or around December 25, 1989, two drums located at Respondent's facility containing **Methyl Mercaptan** ruptured, releasing an estimated seven-hundred and fifty (750) pounds of **Methyl Mercaptan** into the environment; the vapors from said chemical migrated off Respondent's site.

I. Gyro had knowledge of the release on or before January 3, 1990.

J. As of March 2, 1990, Respondent had not provided the required statutory notification of the release of **Methyl Mercaptan** to the National Response Center.

K. Respondent is in violation of the notification requirements of CERCLA 103(a), 42 U.S.C. 9603(a) in that Respondent did not immediately provide notice to the National Response Center after the release occurred. Respondent is, therefore, subject to assessment of penalties under CERCLA 109, 42 U.S.C. 9609.

L. As of March 2, 1990, Respondent had not provided the initial notification to the Deer Park LEPC emergency coordinator or Texas SERC as required by EPCRTKA 304(a), 42 U.S.C. 11004(a).

M. Respondent is in violation of the notification requirements of EPCRTKA 304(a), 42 U.S.C. 11004(a) in that Respondent did not immediately provide notice to the Deer Park

LEPC emergency coordinator or the Texas SERC after the release occurred. Respondent is, therefore, subject to assessment of penalties under EPCRTKA 325, 42 U.S.C. 11045.

N. As of March 2, 1990, Respondent had not provided the written follow-up notice required by EPCRTKA 304(c), 42 U.S.C. 11004(c) to the Deer Park LEPC or Texas SERC. Complainant alleges that 67 days have passed since it became practicable to make the notifications pursuant to EPCRTKA 304(c), 42 U.S.C. 11004(c).

O. Respondent is in violation of the notification requirements of EPCRTKA 304(c), 42 U.S.C. 11004(c), and is therefore subject to assessment of penalties under EPCRTKA 325, 42 U.S.C. 11045.

P. During calendar year 1989, Respondent had **Sodium Hydroxide, Nitric Acid, and Methyl Mercaptan** present at its facility in amounts equal to or greater than the thresholds established in 40 C.F.R. 370.20.

Q. Pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated thereunder, Respondent is required to prepare, or to have available, MSDSs for **Sodium Hydroxide, Nitric Acid, and Methyl Mercaptan**.

R. Respondent failed to submit an MSDS for each chemical or a list of all chemicals, to the following:

- (1) the LEPC, City of Deer Park;
- (2) the SERC, Texas Department of Health; and
- (3) the fire department with jurisdiction over the

facility, Deer Park Emergency Management Office.

S. Respondent is in violation of the reporting requirements of EPCRTKA 311, 42 U.S.C. 11021, and is therefore subject to assessment of penalties under EPCRTKA 325, 42 U.S.C. 11045.

T. During calendar year 1989, Respondent had hazardous chemicals present at the facility in amounts equal to or greater than the thresholds established in 40 C.F.R. 370.20.

U. Respondent failed to submit a completed emergency and hazardous chemical inventory form for these hazardous chemicals by March 1, 1990, to the LEPC of the City of Deer Park and to the SERC, Texas Department of Health.

V. Respondent is in violation of the reporting requirements of EPCRTKA 312(a), 42 U.S.C. 11022(a), and is therefore subject to assessment of penalties under EPCRTKA 325, 42 U.S.C. 11045.

W. Respondent failed to submit a completed emergency and hazardous chemical inventory form for the hazardous chemicals present at its facility by March 1, 1990, to the fire department with jurisdiction over the facility, the Deer Park Emergency Management Office.

X. Respondent is in violation of the reporting requirements of EPCRTKA 312(a), 42 U.S.C. 11022(a), and is therefore subject to assessment of penalties under EPCRTKA 325, 42 U.S.C. 11045.

IV. TERMS OF SETTLEMENT

A. Respondent agrees to make payment and settlement of the penalty in this matter pursuant to CERCLA 109 and EPCRTKA 325 in

the amount totaling \$38,880 (THIRTY-EIGHT THOUSAND, EIGHT HUNDRED AND EIGHTY DOLLARS), as outlined below in paragraphs IV-B through IV-E.

B. Pursuant to CERCLA 109, Respondent agrees to payment of \$6,220.00 (SIX THOUSAND, TWO HUNDRED TWENTY DOLLARS) for violation of CERCLA 103(a), 42 U.S.C. 9603(a), and Respondent shall, within thirty (30) days from the date of execution of this Consent Agreement, forward this agreed to penalty amount in the form of a cashier's or certified check, payable to "Treasurer, United States of America" to:

U.S. Environmental Protection Agency
Superfund - Gyro Chemical and Equipment
Company, Inc.
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
Attn: Superfund Accounting

Docket No. **SARA 6-90-003** should be clearly typed on the check to ensure credit.

C. Pursuant to EPCRTKA 325, Respondent agrees to payment and settlement of all remaining violations referenced in this Consent Agreement in the penalty amount of \$32,660.00 (THIRTY-TWO THOUSAND, SIX HUNDRED, AND SIXTY DOLLARS) as follows:

(1) \$10,000.00 (TEN THOUSAND DOLLARS) to be paid 30 days from the execution of this Consent Agreement and Final Order.

(2) \$22,600.00 (TWENTY-TWO THOUSAND, SIX HUNDRED DOLLARS) to be paid in a schedule of payments as outlined below:

(a) \$11,300.00 to be paid within 6 months after

the execution of this Consent Agreement.

(b) \$11,300.00 to be paid 12 months after the execution of this Consent Agreement.

D. Respondent may accelerate these payments if desired. The payment shall be made by mailing a money order, cashier's check, or certified check payable to "Treasurer of the United States", within thirty (30) days of the effective date of this document to the following address:

Regional Hearing Clerk (6C)
U.S. EPA Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. **SARA 6-90-003** should be clearly typed on the check to ensure credit.

E. Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check, or certified check to the following:

Mr. Steve Mason
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

and

Ms. Hortense Haynes
Office of Regional Counsel (6C-WT)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

V. POLLUTION PREVENTION AND TRAINING PROJECTS

A. Beginning with the first regularly scheduled meeting after execution of this Consent Agreement, and continuing for the period of one year thereafter, a representative of Gyro will attend each scheduled meeting of the Local Emergency Planning Committee for Deer Park, Texas.

B. Gyro shall forward a certified check or cashier's check in the amount of \$3,000.00 (THREE THOUSAND DOLLARS), made payable to the Deer Park Local Emergency Planning Committee to:

Mr. Jimmy Burke, Chairperson
Deer Park Local Emergency Planning Committee
P.O. Box 700
Deer Park, Texas 77536-0700

VI. STIPULATED PENALTIES

A. If Respondent fails to pay the penalties agreed to in Section IV A of this Consent Agreement in the manner and upon the terms directed, or if Respondent fails to satisfactorily complete the additional stipulations specified in Section V, Respondent agrees to pay stipulated civil penalties as follows:

Period of Failure to Comply	Penalty per day per Violation
1st to 15th day	\$ 500.00
Over 15 days	\$ 1,000.00

The stipulated penalties shall continue to accrue until the violation is corrected.

B. If EPA does not receive payment of the stipulated penalties within thirty (30) days of the due date, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury

in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment.

C. The due date is the date or dates specified in this Consent Agreement for payment.

D. If the payment is overdue, EPA will also impose a late payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. Finally, EPA will apply a 6 percent per annum penalty on any principal amount not paid within ninety (90) days of the due date.

E. Other penalties for failure to make a timely payment may also apply.

F. Respondent shall pay any stipulated penalties that it incurs under this paragraph by cashiers or certified check made payable to the "Treasurer of the United States," and sent to:

EPA Region 6
Regional Hearing Clerk
Office of Regional Counsel (6C)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

with a copy to:

Russell F. Rhoades
Director, Environmental Services Division (6E)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

The check shall be tendered by the 15th day of the month following the month in which the violations occurred, and shall

be accompanied by a transmittal letter describing the basis for the penalties.

VII. COMPLIANCE WITH OTHER LAWS

A. This Order shall not be interpreted to relieve Respondent of its obligations to comply with the requirements of other applicable Federal, State or local laws or regulations. The pending or outcome of any proceeding concerning the issuance, reissuance, or modification of any authorization or permit shall neither affect or postpone Respondent's duties and liabilities as set forth in this Order. Nothing in this Order shall be construed to prevent or limit the EPA's civil authority or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

VIII. NOTICE

Any notice to be made to the EPA under the terms of this Consent Agreement and Final Order shall be made in writing, and deposited in the United States Mail addressed to:

Russell F. Rhoades
Director, Environmental Services Division (6E)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

and

Ms. Hortense Haynes
Office of Regional Counsel (6C-WT)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Any notice to be made to the Respondent under the terms of this Consent Agreement and Final Order shall be made in writing, and deposited in the United States Mail addressed to:

Walter D. James III
Winstead Sechrest and Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

VIII. MODIFICATIONS

Except as provided for herein, there shall be no modification of this Order without written approval of all of the parties to this Order and the Regional Administrator of EPA, Region 6.

IX. TERMINATION

A. This Order shall terminate when Respondent has paid all penalties as stated in Section IV A-B and completed the additional stipulations as stated in Section V of this Consent Agreement.


B. EFFECTIVE DATE: This Order shall become effective on the date that it is signed by EPA and Respondent.

WHEREFORE, WE HEREBY CONSENT to the entry of this Order.

United States Environmental
Protection Agency, Region 6
COMPLAINANT

Date

Sept. 4, 1991


Director

Environmental Services Division
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Date

Aug. 16, 1991


FOR RESPONDENT

Gyro Chemical and Equipment
Company, Inc.